

CAPISTRANO BAY DISTRICT  
AGENDA REPORT  
*January 28, 2025*

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*New Business*

## **ITEM 11a**

### New District General Counsel

The District has the opportunity to replace the current attorney for the District, Sean Schwerdtfeger, with John Bakker of Redwood Public Law LLP.

Mr. Bakker (pronounced as 'bocker') has over 25 years of experience dealing with Special Districts, Public Agencies and Municipalities. While with the firm of Meyers Nave LLP last year, John served as the District's special counsel during the creation of the Special Parcel Tax and is intimately familiar with that project from its inception and the current issues before the Advisory Committee and the Board.

John is not a coastal law attorney but neither was Sean Schwerdtfeger and the District already has the two leading coastal law professionals in the State under contract. Mr. Bakker's area of expertise is with Special District Law which bookends very effectively with Stan Lamport and Steve Kaufmann, whom he works very well with since August of last year.

After the issue of the Parcel Tax coming into question as a possible gift of public funds, comments from Board and Committee members during that time indicate that John Bakker would be a better fit to meet the needs of the District.

Attached is Mr. Bakker's engagement agreement for your review. This is essentially a duplicate of the previous engagement agreement from August but with a broader defined scope of services.

409 13th Street  
Suite 600  
Oakland, California 94612



Mobile (510) 282-3280  
john.bakker@redwoodpubliclaw.com  
redwoodpubliclaw.com

November 14, 2024

*Via electronic mail*

*Personal, Privileged, and Confidential*

Donal Russell, General Manager  
Capistrano Bay Community Services District  
35000 Beach Road  
Capistrano Beach, CA 92624  
drussell@capobay.org

**Subject: Confirmation of Engagement and Fee Agreement**

Dear Mr. Russell:

We are grateful that Capistrano Bay Community Services District (“Client” or “you”) has decided to hire Redwood Public Law, LLP (“Redwood” or “we/us”) as its attorney. This letter explains the terms of our attorney-client relationship and outlines the fees Redwood charges for its services. If you agree to the terms, please sign below, return the letter to me, at which point this letter will become the “Agreement,” and we can get started serving you.

**1. Scope of Services**

As we discussed, you are hiring us to provide legal services in the following matter: serve as the District’s general counsel, which involves providing legal services as are customarily performed by local-agency general counsel including general advice on the administration of the District, assisting with contracts for goods and services, and attending board meetings. The services do not include litigation matters, unless we agree to provide such additional services as specified below. Redwood will provide those legal services reasonably required to represent you. We will take reasonable steps to keep you informed of progress and will promptly respond to your inquiries. We will also provide additional services to you pursuant to the terms of this letter, if we both agree in writing, which may be in an email exchange.

## **2. Staffing**

Although I intend to have primary responsibility for handling these matters, you are retaining Redwood and not any specific attorney. I will use other attorneys and legal assistants in the best exercise of my professional judgment. If, at any time, you have any questions, concerns, or comments about how the matter is staffed, or anything else, please contact me or any other Redwood partner.

## **3. Deposit**

As we discussed, we will not require an initial deposit.

## **4. Fees and Billing Practices**

As compensation for our services, you agree to pay by the hour at our hourly rates for all time spent on your matter by Redwood's legal personnel. Current hourly rates for legal personnel working on your matter are listed in Attachment 1. Time is billed in minimum increments of one-tenth (0.1) of an hour.

The rates on this schedule are typically revised at the beginning of the year. If you decline to pay increased rates, Redwood will have the right to withdraw as attorney for you if allowed under the Rules of Professional Conduct of the State Bar of California and/or applicable law.

The time charged will include, but is not limited to, the time attorneys spend on telephone calls, emails and other electronic communications relating to your matter, including calls and emails with you and other parties and attorneys. Attorneys will charge for waiting time and for travel time, both locally and out of town.

## **5. Costs and Other Charges**

### **5.1. Costs, generally**

Redwood will incur various costs and expenses in performing legal services under this Agreement. You agree to pay for all costs, disbursements, and expenses in addition to the hourly fees.

### **5.2. External costs**

External costs and expenses commonly include notary fees, long distance telephone charges, messenger and other delivery fees, postage, outside photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, translator/interpreter fees, consultants' fees and/or special master fees and other similar items. The foregoing external costs and expenses will be charged at Redwood'



### **5.3. Internal costs**

Internal charges include, but are not limited to, storage of electronic and physical client files and other documents and files kept as part of providing legal services, legal research services, duplicating, facsimile charges, telephone and video and teleconference system charges, postage, mileage, and other administrative expenses. We have found that the most effective method of accounting for these administrative costs is to charge a flat 5% of the professional fees incurred.

### **5.4. Out-of-town travel**

You agree to pay for transportation, meals, lodging and all other costs of any necessary out-of-town travel by our legal personnel. You will also be charged our hourly rates for the time legal personnel spend traveling.

### **5.5. Experts, Consultants, and Investigators**

To aid in your matter, it might become necessary to hire expert witnesses, consultants, or investigators. You agree to pay such fees and charges. After consulting with you, we will select any expert witnesses, consultants, or investigators to be hired, and we will inform you of who is chosen and their charges.

### **5.6. Pre-approval for large-cost items**

We will obtain your consent before incurring any costs more than \$1,000.

## **6. Statements and Payments**

Redwood will send you monthly statements showing attorney fees and costs incurred and their bases, any amounts applied from the deposit(s), and any current balance owed. If no attorney fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month unless you request a statement. We request that any balance will be paid in full within 30 days after the statement is sent. You agree to promptly review all statements we send you and communicate any objections, questions, or concerns about them.

If a statement is not paid when due, interest will be charged on the principal balance (consisting of any unpaid fees, costs, and/or expenses) shown on the bill. Interest will be calculated by multiplying the unpaid balance by the periodic rate of 0.833% per month. The unpaid balance will bear interest until paid.

## **7. Arbitration**

### **7.1. Arbitration of All Claims Including Claims of Malpractice**

Any dispute between Redwood and you regarding the construction, application, or performance of any services under this Agreement, and any claim arising out of or



relating to this Agreement or its breach, including, without limitation, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud, and disputes regarding attorney fees and/or costs charged under this Agreement (except as provided in 7.2 below) shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party. The parties shall appoint one person to hear and determine the dispute in Alameda County, California before the American Arbitration Association, following its then prevailing rules, unless the parties agree in writing to a different arbitration method or forum. You and Redwood confirm that each has read and understands this subsection and voluntarily agrees to binding arbitration. In doing so, you and Redwood voluntarily give up important constitutional rights to trial by judge or jury, as well as rights to appeal. You may consult with an independent lawyer of your choice to review these arbitration provisions, and this entire agreement, prior to signing this Agreement.

### **7.2. Mandatory Fee Arbitration**

Notwithstanding 7.1 above, the parties acknowledge that in any dispute over attorneys' fees, costs or both subject to the jurisdiction of the State of California over attorneys' fees, charges, costs, or expenses, you have the right to elect arbitration pursuant to procedures as set forth in California Business and Professions Code Sections 6200-6206 (the Mandatory Fee Arbitration Act). If, after receiving a Notice of Client's Right to Fee Arbitration, you do not choose to proceed under the Mandatory Fee Arbitration Act procedures by failing to file a request for fee arbitration within 30 days, any dispute over fees, charges, costs, or expenses will be resolved by binding arbitration as provided in 7.1 above. Arbitration pursuant to the Mandatory Fee Arbitration Act is non-binding unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. The Mandatory Fee Arbitration Act procedures allow a court trial after non-binding arbitration, or a subsequent binding contractual arbitration if the parties have agreed to binding arbitration, if either party rejects the award within 30 days after the award is mailed to the parties.

### **8. Client Approval Necessary for Settlement**

Redwood will not make any settlement or compromise of any nature of any of your claims without your prior approval. You have the absolute right to accept or reject any settlement.

### **9. Termination of Representation**

You may terminate our attorney-client relationship at any time. Redwood may withdraw with your consent or for good cause or if allowed under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which Redwood may withdraw are: (a) with your consent; (b) your conduct makes it unreasonably difficult for the Redwood to carry out the representation effectively; and/or (c) you do not pay Redwood's fees or costs as



required by this Agreement. Notwithstanding the discharge, you will remain obligated to pay Redwood at the agreed rates for all services provided and to reimburse Redwood for all costs advanced.

Following any termination of representation, we will release your client files only following your delivery to us of a signed release letter containing appropriate directions and an acknowledgment of the obligation to pay outstanding fees. You will be charged for the reasonable costs of retrieval, assembly, copying, processing, and transfer of all files or materials.

#### **10. Conclusion of Services**

When Redwood's services conclude, whether by completing the services covered by this Agreement, or by discharge or withdrawal, all unpaid charges for fees or costs will be due and payable immediately.

#### **11. Document Retention**

During Redwood's representation of you, you might provide us with, and we might obtain documents that are relevant to, the representation. Some of those documents might be important to you and so that there is no confusion we find that it is useful at the start of the representation for us to communicate our document retention policy.

Our policy reflects our commitment to using less paper and eliminating unnecessary copies of documents. Documents of record can be either hard copies or digital, regardless of the form they took originally when created or received by Redwood. Whenever it is proper and practical, Redwood prefers documents of record (official version) to be in digital format. Further, if a record is stored electronically, then paper copies may be destroyed. This helps us manage information, helps the environment, and helps control your and our costs. The materials pertaining to our representation belong to you and you may access them or have duplicates provided to you at any time during our engagement apart from certain Redwood accounting information.

Redwood's policy is for clients to take immediate possession of paper records after conclusion of the matter and to maintain electronic records for a period of 5 years after the conclusion of a matter. If you do not notify us that you want to take possession of paper records, we will destroy them in a secure manner. Electronic records held for five years will subsequently be destroyed unless you let us know that you wish to take possession of them.

#### **12. Disclaimer of Guaranty and Estimates**

Nothing in this Agreement and nothing in Redwood's statements to you will be construed as a promise or guarantee about the outcome of the matter. Redwood makes



no such promises or guarantees. Redwood's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits that you make or estimate of fees given by Redwood are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate. Actual fees may vary significantly from estimates given.

### **13. Professional Liability Insurance Disclosure**

Pursuant to California Rule of Professional Conduct 1.4.2.(a), Redwood confirms that has professional liability insurance.

We maintain the following insurance, at a minimum:

General liability and property damage	\$2,000,000 per occurrence \$4,000,000 aggregate
Professional errors and omission	\$5,000,000 aggregate

### **14. No Tax Advice**

Redwood has not been retained to provide you with any tax advice concerning any of the services described in paragraph 2 above. Any documents prepared by Redwood may have specific tax ramifications. To be sure you understand and are certain of all the potential tax consequences, you should consult with tax advisors regarding these matters.

### **15. Notices**

You may give written notice to Redwood using the address set forth above, and Redwood may give notice using the address set forth above. Either party may change its address for notifications by notifying the other party in writing in accordance with this paragraph.

### **16. Consent to Use of Email and Cloud Services**

To provide you with efficient and convenient legal services, you and Redwood will frequently communicate and transmit documents using email. There may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, you are consenting to such email transmissions with you and your representatives and agents. We are pleased to make arrangements to ensure secure electronic transmission of documents.



In addition, Redwood uses cloud computing services with servers located in a facility other than Redwood's office. Most of Redwood's electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, you understand and consent to having communications, documents, and information pertinent to your matter stored in such a cloud-based service.

Rest assured that Redwood takes reasonable precautions to ensure your data is maintained securely.

### **17. Conflicts of Interest**

Redwood's practice involves the representation of many public agencies in the State of California of all types. It is not uncommon for public agencies to have strong views on matters of public policy that diverge from one another.

Redwood performs a variety of professional services for its clients, and it is possible that Redwood will represent public agency clients that are adverse to you on other, unrelated matters or that Redwood will represent another client that has views on public policy or legal matters that differ from your own views on those policies or matters. You expressly agree that you waive any actual or potential conflicts that might arise from such future representations, that you will not attempt to disqualify Redwood on such matters, and that Redwood is free to represent its clients on such matters.

By executing this Agreement, you acknowledge that you and Redwood have discussed these matters and that you confirm that you do not object to Redwood's representation of clients on matters where those clients' legal, governmental, or political objectives and/or positions may be different from or adverse to yours, and that you waive any conflicts of interest with respect to our representation of such clients with differing legal, governmental or political interests. You further confirm that you will not assert any conflict of interest concerning such representations or attempt to disqualify Redwood from representing such clients notwithstanding such adversity.

You agree that, while you may terminate your attorney-client relationship with Redwood, Redwood would be free to represent such clients even on those matters that you consider adverse to you, and that you waive any conflict of interest in connection therewith.

Of course, your acknowledgments and consents above do not permit Redwood to represent another client in the same matter in which Redwood is adverse to you and do not permit Redwood to represent another client if there would be a significant risk that Redwood's representation of you would be materially limited by the representation of the other client. Any such representation would require Redwood to obtain your informed written consent and of the other client.





**18. Entire Agreement**

This is our entire agreement. No other agreement, statement, or promise made on or before the effective date of this agreement will bind either of us.

**19. Severability in Event of Partial Invalidity**

If any provision of this letter, as agreed to by you, is held in whole or in part to be unenforceable for any reason, the remainder of that provision and the letter will be severable and remain in effect.

**20. Modification By Subsequent Agreement**

You and Redwood may only modify this Agreement by our mutual subsequent written amendment.

**21. Governing Law**

This Agreement is governed by, and must be interpreted under, California law, and any court proceedings relating to this Agreement must be instituted in the County of Alameda.

**22. Effective Date**

This Agreement will govern all legal services performed by Redwood on your behalf commencing with the date Redwood first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, you will be obligated to pay Redwood the reasonable value of any services Redwood may have performed for you.

Very truly yours,

REDWOOD PUBLIC LAW, LLP

John Bakker, Partner

Agreed:  
CAPISTRANO BAY COMMUNITY SERVICES  
DISTRICT

By: \_\_\_\_\_  
Name: Donal Russell  
Its: General Manager



Confirmation of Engagement and Fee Agreement  
November 14, 2024



ATTACHMENT 1  
**CONFIDENTIAL**  
*Redwood Public Law, LLP*  
2024 Standard Hourly Rates

Title	Rate
Senior Partner	\$525
Partner	\$515
Of Counsel	\$460
Senior Associate	\$380
Mid-level Associate	\$350
Junior Associate	\$325
Law Clerk	\$275
Paralegal	\$235

